

Police Prosecutor Update

Issue No. 183
February 2007

This month we will look at a couple of cases dealing with the uniform or marked vehicle statute (I.C. 9-30-2-2) and with reasonable suspicion to stop.

One case stated that where there is no contact between the parties, I.C. 9-30-2-2 does not apply. There must be some direct confrontation between the officer and the defendant. In this case, the officer, not in uniform and without his badge, observed the defendant driving a motor vehicle. He knew the defendant's driving privileges were revoked. The officer drafted an information, probable case affidavit, and a traffic ticket. He took these documents to the prosecutor's office and turned them in. He was not involved in any further actions taken by the State. The court of appeals held that since the officer did not personally engage the defendant, the statute did not apply.

* * * * *

The second case involved both I.C. 9-30-2-2 and the reasonable suspicion issue. The police officer, working undercover, wore a dark hooded sweatshirt, jeans, a vest that said "POLICE" in plain white letters, and had his badge on his shoulder. He was in an unmarked police car. The vest did not bear his name, that of the police department, or a logo, nor were there any other marks of distinction. The court of appeals held that his attire was not a uniform for the purpose of stopping someone for violating Indiana law regulating the operation of a motor vehicle.

The officer was surveilling a 24-hour gas station. He was sitting in the unmarked car in a parking lot across the street from the gas station. He had made between 20 and 50 arrests at this gas station over the past four years, mostly for narcotics, illegal firearms, and prostitution.

He had been surveilling about 20 minutes when a Ford Taurus failed to use its turn signal as it turned into the gas station. The vehicle circled the gas station and parked. About 10 minutes later, a second vehicle pulled into the gas station and parked next to the Taurus. The front seat passenger of the Taurus got into the front passenger seat of the second vehicle, which then circled the lot and left. The Taurus remained parked. The officer radioed for a uniformed officer to come to the gas station.

Based on his observations, the officer approached and "stopped" the car. He knocked on the driver's side window and the driver rolled down the window. The officer informed him he was stopping him because he failed to use his turn signal when he pulled into the gas station and for suspected narcotics activity. The court of appeals summarized the totality of the officer's observations as follows: A vehicle pulled into a gas station and parked. Minutes later a second vehicle pulled into the gas station and parked next to the first vehicle. A passenger from the first vehicle got into the second vehicle, which then left the gas station. The officer then "stopped" the first vehicle, which had yet to leave the gas station, on suspicion of narcotics activity. The court stated that to label the behavior displayed by the vehicles in this case as *suspicious* would give the police leave to legally stop anyone in a neighborhood known for its unlawful activity, regardless of the seemingly innocent behavior displayed by citizens. Presence in a high crime area alone is not sufficient to create reasonable suspicion to justify an investigatory stop.

Case names: *Maynard v. State*, ___ N.E.2d ___ (Ind. Ct. App. 2007).
Davis v. State, 858 N.E.2d 168 (Ind. Ct. App. 2006).